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Grand-jury issue

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Gravel, Mike

Pentagon Papers

# Pentagon papers and immunity

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Boston

Offshoots of the legal battles being fought before a Boston grand jury investigating the disclosure of the Pentagon papers have reached the halls of Harvard University, the floor of the U.S. Senate, and the Supreme Court.

But the Boston grand jury has little to show for its eight months of hearings on the case. Nearly all those who are known to have been subpoenaed continue to fight their subpoenas on legal grounds.

The grand-jury proceedings have triggered a confrontation between executive and legislative branches, which is coming to a head in the Senate this week.

The grand jury has been seeking information on the republication by Beacon Press of the set of Pentagon papers that Sen. Mike Gravel (D) of Alaska made public at a late-night subcommittee session (shortly before they were declassified by the government) and then made available to Beacon.

## At crux of the matter

At issue is how broadly or narrowly the courts should interpret the speech or debate clause of the U.S. Constitution under which no legislator can be called to task for words uttered in either chamber of Congress. Lower courts have already ruled that the grand jury cannot question either the Senator or a staff aide who was subpoenaed and have placed limits on questioning of "third parties" about the republication of the "Gravel edition."

The Senator has appealed his case to the Supreme Court, with oral argument scheduled for April 19 and an expedited decision expected by June, claiming that any such questioning of third parties imperils his own immunity.

Partisan politics entered the picture when the Senate Democratic Policy Committee called on the Senate to intervene in the Supreme Court battle by filing a "friend-of-the-court" brief and paying Senator Gravel's future legal fees (his 1971 fees totaled \$23,000). Sen. Sam J. Ervin Jr. (D) of North Carolina, argued that the fundamental issue is not whether the Senate approved of Mr. Gravel's actions, but rather the right of every senator to "be allowed to do what he thinks should be done for his country without having to answer to the executive and judiciary."

## Republicans armed, too

Senate Republicans voted to file their own brief — defending congressional immunity but opposing payment of any legal fees and stressing the opposition of many Republicans to the Gravel actions. But Sen. Mike Mansfield of Montana introduced a resolu-

tion for one brief plus payment of expenses, which sparked a bitter floor fight spiced with heavy Republican criticism about the Senator Gravel's motives.

Although only five cases involving the speech-and-debate clause have reached the Supreme Court in U.S. history, there may be three this session. Oral arguments have already been heard in the case of former Maryland Sen. Daniel Brewster, indicted for bribery for allegedly accepting money in exchange for a floor speech.

And a group of Washington schoolchildren have filed suit against the House District Committee for publishing their names in a scathing criticism of school conditions in the district. If the Supreme Court hears this case, the government will be called on to defend at the same time both attempts to narrow immunity — in the Gravel case — and broaden it, in the district case.

## Handcuffs used

The Ellsberg grand-jury controversy also spilled over into academia, this week, when handcuffs were used to hold Prof. Samuel L. Popkin in contempt for refusing to testify after legally resisting subpoenas since Aug. 19.

Mr. Popkin, an assistant professor of government at Harvard who specialized in Vietnam area studies and is a personal friend of Dr. Daniel Ellsberg, was reprieved from a sentence of up to 18 months (the life of the grand jury) by a continuing stay from the First Circuit Court of Appeals.

It appears likely that he will now return before the grand jury and answer the three questions he previously refused to answer while reserving the possibility of appealing on new questions.

He would be the first to testify since Mrs. Idella Marx, Dr. Ellsberg's stepmother-in-law in December, 1971.

The questions include whether he had ever personally seen the papers, learned of anyone who possessed them in Massachusetts, and what is his telephone number.

Professor Popkin has unsuccessfully based his silence on grounds that academic sources of information, like journalistic sources, should be privileged.

He has received wide support in the Harvard community. Twenty-one professors filed supporting affidavits, including some leading China scholars who referred to government intimidation of scholars in the 1950's. Prof. John Kenneth Galbraith has helped raise \$3,500 from the academic community for Professor Popkin's legal defense, and Daniel Steiner, Harvard's general counsel, was present at the appeal, although he did not speak.

Ellsberg, Daniel

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